

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010090205

ORDER GRANTING MOTION TO
DISMISS CERTAIN ISSUES

On September 3, 2010, Student's parents on behalf of Student (Student) filed a request for due process hearing (complaint), naming the Santa Monica-Malibu Unified School District (District) as the respondent.

On September 13, 2010, the District filed a motion to dismiss certain issues in Student's complaint. The Office of Administrative Hearings (OAH) has received no opposition or other response to the motion from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on the Rehabilitation Act of 1973, the Americans with Disabilities Act, or Title 42 United States Code section 1983.

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific

misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

The District filed the instant motion seeking to dismiss certain claims from Student's complaint. In particular, the District seeks to dismiss any claims arising under the Rehabilitation Act, the Americans with Disabilities Act, or Title 42 United States Code section 1983. The District also seeks to dismiss any claims arising during the 2007-2008 school year on the basis that those claims are barred by the statute of limitations.

The charging allegations of Student's due process request deal with the 2008-2009 and 2009-2010 school years, not the 2007-2008 school year. In the introductory language to the document there is a mention of the 2007-2008 school year, but it is not clear whether that was a typographical error. To the extent that Student intended to allege a denial of a free appropriate public education during the 2007-2008 school year, such a charge is beyond the statute of limitations and must be dismissed.

Likewise, there is a mention in the introductory language of the complaint of a violation of the Rehabilitation Act and violation of federal laws such as the Americans with Disabilities Act. To the extent that Student has alleged violations of those laws, the allegations are outside of the jurisdiction of OAH and must be dismissed.

ORDER

The District's motion to dismiss certain issues is granted. Any allegations charging violation of the Rehabilitation Act, the Americans with Disabilities Act, or Title 42 United States Code section 1983 are hereby dismissed from Student's complaint. To the extent that Student's complaint charges the District with the failure to provide a free appropriate public education during the 2007-2008 school year, those charges are dismissed. The matter will proceed as scheduled on the remaining issues.

IT IS SO ORDERED.

Dated: September 23, 2010

/s/

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings